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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.1001 OF 2017

Reena Kerketta ... Applicant

V/s.

The State of Maharashtra and anr ... Respondents

Ms. Bimla Chounal, for the Applicant.
Mrs. A.S. Pai, APP for the Respondent State.

**CORAM : RANJIT MORE &
DR.SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 6th NOVEMBER, 2017.

P.C. :

- 1] Heard learned counsel for the applicant learned APP.
- 2] Leave to amend the prayer clause so as to give particulars of Sessions Case.
- 3] Necessary amendment shall be carried out forthwith.
- 4] The complainant herself has approached this Court, invoking jurisdiction under Section 482 of Code of Criminal Procedure, to quash and set aside the proceeding in Session Case No.585 of 2017 pending before the Sessions Court, Mumbai.
- 5] The said Sessions case arises out of registration of

C.R.No.141 of 2016 at Khar Police Station, against respondent No.2, for offence punishable under Sections 376, 419, 317, 504 of the Indian Penal Code.

6] During the pendency of trial of said Sessions Case, parties settled their dispute and have approached this Court for quashing and setting aside the C.R., by consent.

7] Applicant is personally present before us. She submits that there was love relationship between herself and respondent No.2. She submits that her physical relations with the respondent No.2 were consensual. She submits that she is originally from Zharkhad and working in Bombay as maid-servant. She wants to go back to Zarkhand and wants to start new life and therefore, prays to quash the proceeding of the subject F.I.R. and the Sessions Case.

8] It is true that offence under Section 376 is of serious nature and as offence against society. Consequenelty, such an offence cannot be quashed by consent. Nonetheless, it would be advantageous to refer to paragraph 28 of **Narinder Singh -vs- State of Punjab [2014 AIR SCW 2065]** wherein the Apex Court has kheld as under:-

“28.Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the Court cannot be oblivious to hard realities that many times whenever there is quarrel between the parties

leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well. Therefore, only because FIR/Charge-sheet incorporates the provisions of Section 307 IPC would not, by itself be a ground to reject the petition under Section 482 of the Code and refuse to accept the settlement between the parties. We are, therefore, of the opinion that while taking a call as to whether compromise in such cases should be effected or not, the High Court should go by the nature of the injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate part of the body) and the nature of weapons used etc. On the basis, if it is found that there is a strong possibility of proving the charge under Section 307 IPC, once the evidence to that effect is led and injuries proved, the court should not accept settlement between the parties. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of Section 307 IPC were unnecessary included in the charge-sheet, the court can accept the plea of compounding of the offence based on settlement between the parties”.

9] The decision of the Apex Court, thus, makes it clear that the Court cannot decline to quash the FIR merely because the FIR incorporates a particular provision which is a serious offence or an

offence against the society. The Court has to endeavour to find out whether the FIR indeed discloses ingredients of such offence and that the Court can accept the settlement and quash the FIR if the Court is of the opinion that such an offence is unnecessarily incorporated in the charge-sheet.

10] We have gone through the F.I.R. The F.I.R. reveals that the complainant is of 21 years and respondent No.2 is of 28 years. F.I.R. also reveals that the relations between the complainant and respondent No.2 were consensual and hence offence under Section 376 is not made out. Consequently, we find no purpose would be served by keeping criminal proceeding pending except burdening the Criminal Courts which are already overburdened.

11] Thus, in the light of principles laid down by the Apex Court in **Narinder Singh (supra)**, we are of the considered view that there is no impediment in quashing the proceeding of Session Case pending before the Sessions Court, Mumbai. Accordingly, application is allowed in terms of prayer clause (a).

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]